BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

In the Matter of	
AMERICAN CABLESYSTEMS OF FLORIDA, LTD., a Massachusetts Limited Partnership d/b/a/ Continental Cablevision of Broward County and CONTINENTAL CABLEVISION OF OF JACKSONVILLE, INC., a Florida Corporation	
Complainants,	
v.	File No. PA-91-0012
FLORIDA POWER & LIGHT COMPANY	
Respondent.	

CC 95-95

TO: The Common Carrier Bureau

REPLY

American Cablesystems of Florida, Ltd. and Continental Cablevision of Jacksonville, Inc. (collectively "Continental") submit this Reply to the Response of Florida Power & Light Company ("FPL").

FPL does not dispute that its calculation of the maintenance component of its pole attachment charge departs form the FCC's methodology as set forth in the Commission's 1987 Report and Order, Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCC Rcd 4387, 4402 (1987), recon. denied, 4 FCC Rcd 468 (1989). Nor does FPL dispute that its method of

calculation has been previously rejected by this Commission. See Warner Amex Cable Communications, Inc. v. Arkansas Power & Light Co., PA-82-0019 (Oct. 11, 1983). Nevertheless, FPL asserts that it is Continental's burden to show that FPL's calculation is unjust and unreasonable. We respectfully submit that a demonstration that FPL's calculation is contrary to established precedent -- as Continental has demonstrated here -- is sufficient to meet its burden. It is FPL which must justify its departure from the FCC's methodology.

FPL's argument is essentially two-fold. First FPL argues that its reliance on a subaccount of Account 369, rather than on the entire account as the FCC's methodology requires, is more accurate and creates a better "balance." Then FPL argues that, because it has chosen to include the subaccount in its FERC Form 1, the subaccount should be accepted.

To be sure, the FCC has always recognized that the individual components of the pole attachment calculation could be refined to provide more accuracy. But the FCC's responsibility is to achieve an overall balance and to develop a "simple and expeditious procedure." Senate Rep. No. 95-580, 98th Cong. 1st Sess. 21 (1977). FPL's attempt to revise the FCC Formula does not achieve a better balance or a more expeditious procedure. It simply achieves a higher pole attachment rate.

The Commission's methodology used in calculating the maintenance component for power companies' pole attachment rates is the product of careful consideration over a lengthy period of time. See, e.g., Arkansas Power & Light, supra; 1987 Report & Order, at 4402. It has been considered and reconsidered in a number of cases, one of which involved FPL. Warner Amex Cable Communications, Inc. v. Florida Power & Light Co., PA-82-006 (June 8, 1982). There is no question that the calculation could be refined to provide greater accuracy and a stronger relationship between pole investment and the expenses incurred to maintain that investment. But FPL's methodology does not get us closer to this underlying, more accurate, number.

FERC Account 593 consists of expenses for work on (1) "poles, towers, and fixtures," (2) "overhead conductors and devices," and (3)" overhead services." See the description of Account 593 in Part 101 of 18 C.F.R., Attachment A hereto. The work related to poles involves such activities as painting, marking, repairing, stubbing, reconditioning, and guying poles and fixtures. The work related to overhead conductors involves such activities as repairing, resagging, rearranging, and respacing conductors and grounds, and tree trimming, clearing, and treating the rights of way occupied by the conductors. The work related to services involves moving, refastening, and retying customer service drops. Because the expenses reflected

in Account 593 relate to investment Accounts 364, 365, and 369, the FCC divides Account 593 by these three investment accounts to derive the maintenance component. It would be more accurate, of course, to include only the expenses related to maintaining poles, towers, and fixtures, and then to divide by the investment in those facilities. It does not follow, however, that simply subtracting that portion of Account 369 relating to underground services investment leads to a more accurate result.

Evidence developed in another proceeding indicates that dividing the maintenance expenses related to poles, towers, and fixtures by the investment in poles, towers, and fixtures would be much <u>smaller</u> than the fraction derived by the Commission's methodology. In a proceeding before the Kentucky Public Service Commission, Kentucky Power Company produced information showing that the maintenance of poles, towers, and fixtures amounted to only 11 percent of that utility's Account 593 ($821,079 of $7,279,984). See Attachment B, hereto. Dividing 11 percent of FPL's Account 593 by the depreciated value of Account 364 would derive a maintenance component of 3.2 percent ($7,280,761 divided by $225,113,000 = .032).

We cannot say, of course, that the breakdown of FPL's Account 593 mirrors exactly that of Kentucky Power. But that really is the point here. Only FPL knows, and FPL is not saying. FPL has selectively disclosed information that would

raise the rate. It has not disclosed all the information that would permit the FCC to determine whether, in reality, its methodology overstates or understates the more exact breakdown of pole and fixture maintenance divided by pole investment.

This problem of "selective refinement" is especially acute in this instance and makes even more clear the wisdom in the FCC "balancing" approach. As noted in the Complaint and completely ignored by FPL in its Response, the utility claims to have ceased maintaining records that would permit a more accurate figure for the average cost of a bare utility pole at about the same time that FPL began to rely on a subaccount of Account 369. See Complaint at 11. These divergent record-keeping practices make clear that FPL does not seek greater accuracy in the pole attachment calculation components. It merely seeks a more favorable rate.

FPL argues that its subaccount of Account 369 should be used because the utility has chosen to include the subaccount in its Form 1. FPL disingenuously implies that the breakdown it uses for Account 369 is somehow required by FERC and the Florida PSC. But although the rules do not preclude the use of subaccounts in the Form 1, subaccounts are certainly not required. Use of subaccounts in the form is rare for utilities, and FPL's practice of including Account 369.1 in the depreciation schedule of the Form 1 is by no means the universal practice of utilities in Florida or elsewhere. See,

e.g., Warner Amex Cable Communications, Inc. v. Arkansas Power & Light Co., PA-82-0019 (Oct. 11, 1983). Moreover, FPL's inclusion of the subaccounts of Account 369 in the depreciation schedule of its Form 1 highlights again the utility's "selective refinement." FPL could have just as easily continued to maintain its separate records regarding the composition of Account 364, and to show those subaccounts on its Form 1 as well.

Continental does not "request the Commission to question the cost methodology of the Florida Public Service Commission and the reporting requirements of FERC . . . ." FPL Response at 9. That the Florida PSC has not objected to FPL's separately calculating a depreciation rate for subaccount 369.1 does not make such a separate calculation mandatory. Indeed, there is no indication that the PSC focused on FPL's voluntary action. It is interesting to note, moreover, that FPL's depreciation rate for its overhead services investment -- subaccount 369.1 -- is considerably higher than its depreciation rate for poles or overhead conductors. See p. 337 of FPL's Form 1, attached as the second page of Exhibit B to FPL's Response. The result, of course, is that the investment in that subaccount is being reduced more rapidly than the investment in Accounts 364 or 365, thus further acting to reduce the size of the maintenance component as calculated by FPL. The ability of FPL to manipulate its pole rate in this

way shows why the FCC should be especially reluctant to allow FPL to revise the rate calculation simply through its selective inclusion of subaccounts in its Form 1.

In conclusion, FPL has unilaterally and selectively chosen to include its subaccount to Account 369 in its Form 1, and has argued that reliance on the subaccount schieves a more accurate maintenance component. But FPL's manipulation of its Form 1 has not necessarily achieved a more accurate balance. Continental believes, based on the Kentucky Power example, that the FCC's calculation of the maintenance component probably already overstates the maintenance expense relating to poles, towers, and fixtures. By reducing the denominator of the fraction, FPL's "selective refinement" does not achieve a better balance, but upsets the correct balance still further. Without a similar refinement of the numerator of the fraction, FPL's effort to revise the FCC's pole methodology must be rejected.

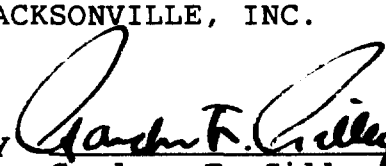
The wisdom of the FCC's "simple and expeditious" balance reflected in its maintenance calculation is here apparent. The FCC's carrying charge methodology as set forth in its 1987 Report and Order is the product of years of consideration in scores of cases. The Commission must not

upset that methodology solely because a utility has chosen to include, selectively, a subaccount in its Form 1.

Respectfully submitted,

AMERICAN CABLE SYSTEMS OF FLORIDA, LTD.

CONTINENTAL CABLEVISION OF JACKSONVILLE, INC.

By 
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October 20, 1992

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ATTACHMENT A

ment. (See operating expense instruction 2.)

593 Maintenance of overhead lines.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in account 364, Poles, Towers and Fixtures, account 365, Overhead Conductors and Devices, and account 369, Services. (See operating expense instruction 2.)

ITEMS

1. Work of the following character on poles, towers, and fixtures:
a. Installing additional clamps or removing clamps or strain insulators on guys in place.
b. Moving line or guy pole in relocation of pole or section of line.
c. Painting poles, towers, crossarms, or pole extensions.
d. Readjusting and changing position of guys or braces.
e. Realigning and straightening poles, crossarms, braces, pins, racks, brackets, and other pole fixtures.
f. Reconditioning reclaimed pole fixtures.
g. Relocating crossarms, racks, brackets, and other fixtures on poles.
h. Repairing pole supported platform.
i. Repairs by others to jointly owned poles.
j. Shaving, cutting rot, or treating poles or crossarms in use or salvaged for reuse.
k. Stubbing poles already in service.
l. Supporting conductors, transformers, and other fixtures and transferring them to new poles during pole replacements.
m. Maintaining pole signs, stencils, tags, etc.
2. Work of the following character on overhead conductors and devices:
a. Overhauling and repairing line cutouts, line switches, line breakers, and capacitor installations.
b. Cleaning insulators and bushings.
c. Refusing line cutouts.
d. Repairing line oil circuit breakers and associated relays and control wiring.
e. Repairing grounds.
f. Resagging, retying, or rearranging position or spacing of conductors.
g. Standing by phones, going to calls, cutting faulty lines clear, or similar activities at times of emergency.
h. Sampling, testing, changing, purifying, and replenishing insulating oil.
i. Transferring loads, switching, and reconnecting circuits and equipment for maintenance purposes.
j. Repairing line testing equipment.
k. Trimming trees and clearing brush.
l. Chemical treatment of right of way area when occurring subsequent to construction of line.
3. Work of the following character on overhead services:
a. Moving position of service either on pole or on customers' premises.
b. Pulling slack in service wire.
c. Retying service wire.
d. Refastening or tightening service bracket.

594 Maintenance of underground lines.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of underground distribution line facilities, the book cost of which is includible in account 366, Underground Conduit, account 367, Underground Conductors and Devices, and account 369, Services. (See operating expense instruction 2.)

ITEMS

1. Work of the following character on underground conduit:
a. Cleaning ducts, manholes, and sewer connections.
b. Moving or changing position of conduit or pipe.
c. Minor alterations of handholes, manholes, or vaults.
d. Refastening, repairing, or moving racks, ladders, or hangers in manholes or vaults.
e. Plugging and shelving ducts.
f. Repairs to sewers, drains, walls, and floors, rings and covers.
2. Work of the following character on underground conductors and devices:
a. Repairing circuit breakers, switches, cutouts, network protectors, and associated relays and control wiring.
b. Repairing grounds.
c. Retraining and reconnecting cables in manholes including transfer of cables from one duct to another.
d. Repairing conductors and splices.
e. Repairing or moving junction boxes and potheads.
f. Refireproofing cables and repairing supports.
g. Repairing electrolysis preventive devices for cables.
h. Repairing cable bonding systems.
i. Sampling, testing, changing, purifying and replenishing insulating oil.
j. Transferring loads, switching and reconnecting circuits and equipment for maintenance purposes.
k. Repairing line testing equipment.
l. Repairing oil or gas equipment in high voltage cable systems and replacement of oil or gas.

ATTACHMENT B

KENTUCKY POWER COMPANY

REQUEST:

List all subaccounts of Accounts 364 and 593 as of year end 1990, as kept in the O&M ledger, PRU, or financial reports, by name and number, and give the amounts for each.

RESPONSE:

Account 364 (Poles, Towers and Fixtures) has no subaccounts. The balance at year end 1990 is $66,863,955 as shown on Exhibit EKW-8, page 10, line 58.

Account 593 has the following subaccounts and balances at year end 1990:

Subaccount	Account Title	Year End 1990 Balance
59311	Tree Trimming	$ 377,869
59312	Tree Removal	377,874
59313	Reclearing	2,392,099
59314	Aerial Spraying	73,521
59315	Ground Spraying	213,494
59321	Maint. of Poles, Towers, and Fixtures - Groundline Treatment	103,444
59329	Maint. of Poles, Towers and Fixtures - All Other	717,635
59330	Maint. of Overhead Conductors and Devices	2,368,321
59340	Maint. of Line Reclosers and Sectionalizers	76,143
59350	Maint. of Overhead Services	578,209
59390	Maint. of Overhead Lines - All Other	1,375
593	Maint. of Overhead Lines	$7,279,984

WITNESS: E. K. WAGNER

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a copy of the foregoing Reply was mailed, postage prepaid by first class mail, this 20th day of October 1992, to the following:

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